IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 742 OF 2001

Nisha A. Agarwal. ... Petitioner.

V/s.

Libord Securities Ltd. ... Respondent.

Ms. Ratna Jaiswal i/b. Nitin Parekh for the Petitioner.
Mr. Kamal Khatu i/b. H.V. Chande for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The Company Petition for winding up has been instituted purely on the basis of an averment that between 3rd August 2000 and 29th September 2000 "the Petitioner paid to the Company the sum of Rs.47,60,000/-" and thereafter, the Petitioner as a Proprietress of a business centre had paid a further sum of Rs.1,60,000/- by a cheque dated 23rd August 2000. The Petitioner contends that there was no reply to the statutory notice of winding up.

2. Two replies have been filed in these proceedings; the first dated 11th June 2007 and the second dated 16th June 2007. In the reply it has been stated that the Petitioner has suppressed the fact that the amounts in question were paid for the purchase of shares and securities by the Respondents on behalf of the Petitioner and not by way of a loan. At the material time, the Respondent, it has been stated, was a member of the Bombay Stock Exchange. The spouse of the Petitioner, Shri Ajay Agarwal, is alleged to have acted on behalf of the Petitionerand carried out transactions in shares in several names including the Petitioner. These transactions were also in the name of M/s. Vinodini Holdings and Estate Developers Pvt.Ltd. and Alaknanda Hotel Resorts Pvt.Ltd. It has been alleged that as the Petitioner was not in possession of a Demat account, delivery was taken on the Demat account of M/s. Vinodini Holdings by the husband of the Petitioner. It has been urged that an arbitration proceeding was instituted before the Investors' Grievance Cell of the Bombay Stock Exchange which culminated in an award dated 12th February 2002. Several transactions are alleged to have been carried out by Shri Ajay Agarwal through the Respondent, in the

name of the Petitioner for which a ledger account was maintained. Details have been furnished in the reply of the deliveries of shares taken by Shri Ajay Agarwal. In the second reply, it has been stated that the very shares which the Respondent purchased for the Petitioner and which were transferred to the account of M/s. Vinodini Holdings were sold by Mr. Ajay Agarwal on behalf of the Petitioner for which consideration was duly realised. The Respondent has inter-alia relied upon a Demat statement for the relevant period. Contract notes have also been annexed to the affidavit in reply.

2. From the material placed on the record by the Respondent, it is evident that the Company Petition has proceeded on a palpably erroneous representation that an amount of Rs.47,60,000/- and an amount of Rs.1,65,000/- was paid by the Petitioner to the Respondent but that the Respondent has failed and neglected to repay the amount. The genesis of the transactions has been suppressed. There were evidently transactions in shares and an award of the arbitral forum of the Bombay Stock Exchange. A Petitioner who comes before the Court must come with clean hands

disclosing all relevant and material facts. This has manifestly not been done. The Petition conceals material facts and deserves to be dismissed on this ground alone.

3. The Company Petition shall accordingly stand dismissed.